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Attorneys for Plaintiff, BARRY ROSEN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BARRY ROSEN,

Plaintiff,

vs.

MANNY LEDEZMA AND DOES 1-10.

Defendants.

Case No.:

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff, BARRY ROSEN (“Plaintiff”), by and through his attorneys of record, alleges against MANNY LEDEZMA and Does 1 -10 inclusive (collectively “Defendants”) as follows:

I.

THE PARTIES

1. Plaintiff Barry Rosen (“Plaintiff”) is a professional photographer who currently and at all relevant times has resided within the County of Los Angeles, California. Plaintiff’s images are copyrighted images, registered with the United States Copyright Office, to which Plaintiff owns all rights, title, and interest.

2. Plaintiff is informed and believes that Defendants have operated and are currently operating as a seller on eBay under the username moviefanz. Plaintiff is informed and believes that Defendants are in the business of selling photographs of celebrities and other collectibles on eBay as moviefanz and have been since 1999.

3. Plaintiff is informed and believes that Manny Ledezma (“Defendant”) is an individual residing within the City of Dallas-Fort Worth, Tarrant, County, Texas. Plaintiff is informed and believes that Defendant operates the moviefanz account on eBay.

4. Plaintiff is informed and believes that Defendant’s actions on eBay are dedicated to publishing, displaying, and selling celebrity photographs and collectibles. Plaintiff is informed and believes that Defendant has sold thousands of items to customers via the moviefanz eBay account.

5. Plaintiff does not presently know the true names and capacities of the Defendants named as Does 1 through 10, and therefore sues such Defendants by these fictitious names. Plaintiff believes that the Doe Defendants are persons or entities who are involved in the acts set forth below, either as independent contractors, agents, or employees of the known Defendants, or through entering into a conspiracy and agreement with the known Defendants to perform these acts for financial gain and profit, in violation of Plaintiff’s rights. Plaintiff will request leave from the Court to amend this Complaint to set forth their true names,

1 identities and capacities when Plaintiff ascertains them. The Doe Defendant and
2 the known Defendant are referred to collectively as “Defendants”.

3 6. Plaintiff is informed and believes that Defendants have been or are the
4 principals, officers, directors, agents, employees, representatives, and/or co-
5 conspirators of each of the other Defendants, and in such capacity or capacities
6 participated in the acts or conduct alleged herein and incurred liability therefore.
7 Plaintiff is informed and believes that at some unknown time, the Defendants or
8 some of them entered into a conspiracy with other of the Defendants to commit the
9 wrongful acts described herein; the actions described below were taken in
10 furtherance of such conspiracy; and Defendants aided and abetted each other in the
11 wrongful acts alleged herein. Plaintiff is informed and believes that each of the
12 Defendants acted for personal gain or in furtherance of their own financial
13 advantage in doing the acts alleged below.
14

15 II.

16 JURISDICTION AND VENUE

17 7. Plaintiff incorporates by reference each allegation contained in the foregoing
18 paragraphs of this Complaint. This action is for damages and permanent injunctive
19 relief arising from Defendants’ copyright infringements in violation of the
20 Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

21 8. ***Subject Matter Jurisdiction:*** This action arises under the Copyright Act, 17
22 U.S.C. sections 101 *et seq.* and 501(a) *et seq.* This Court has original subject
23 matter jurisdiction over all claims, pursuant to 28 U.S.C. sections 1331 and
24 1338(a).

25 9. ***Venue:*** Plaintiff is informed and believes that venue is proper in this Court,
26 pursuant to 28 U.S.C. section 1391(b) and (c) and Section 1400(a) in that the
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1 claims arise in this Judicial District, the injury suffered by Plaintiff took place in
2 this judicial district, and Defendants transact business in this judicial district.

3 10. ***Personal Jurisdiction:*** Plaintiff is informed and believes that personal
4 jurisdiction is proper over the Defendants because for, among other reasons, years
5 Defendants operated and/or currently operate commercial businesses focused on
6 celebrity memorabilia and photos and through which Defendants knowingly,
7 systematically, and continuously transacted or transact business and enter or
8 entered into contracts on an ongoing basis with and provide or provided services to
9 individuals or companies in California, including within the County of Los
10 Angeles; and Defendants have engaged in intentional acts that willfully infringed
11 or assisted in the infringement of Plaintiff's copyrights within California.
12

13 **III.**

14 **FACTUAL ALLEGATIONS**

15 11. Plaintiff incorporates by reference each allegation contained in the foregoing
16 paragraphs of this Complaint.

17 12. Plaintiff Rosen is an individual photographer. Plaintiff created the one (1)
18 photographic work at issue in this case (the "Photograph"). The Photograph
19 consists of material original with Plaintiff and is copyrightable subject matter.
20 Plaintiff is the owner of all rights, title, and interest in the Photograph.

21 13. Plaintiff is informed and believes that Defendant at all relevant times was
22 and is in the business of selling copyright infringing celebrity photographs on eBay
23 under the username moviefanz.

24 14. Plaintiff is informed and believes that, prior to the time of the infringements
25 as alleged herein, Plaintiff had registered the copyright for the Photograph and had
26

1 been issued a Certificate of Registration. Specifically, the copyright name and
2 number of the Photograph is as follows:

3 (1) Reg. No. VA 1-239-760; Anna Kournikova 14

4 15. The Photograph was not a “work for hire”.

5 16. Within the last three years, Plaintiff discovered that Defendants unlawfully
6 copied, publicly displayed, uploaded/downloaded and distributed the copyright
7 registered Photograph without a license on eBay, constituting direct copyright
8 infringement, pursuant to sections 106 and 501 of the Copyright Act (17 U.S.C
9 section 106 and 501).

10 17. Plaintiff is informed and believes that Defendants, without authorization or
11 permission from Plaintiff, unlawfully copied/reproduced, uploaded/downloaded,
12 caused to be uploaded/downloaded, publicly displayed, distributed, and sold the
13 Photograph to a global audience on the World Wide Web via eBay. An example of
14 Defendants’ infringing use is attached hereto as Exhibit 1.

15 18. Plaintiff is informed and believes that at all relevant times the infringing
16 Photograph at issue was publicly accessible and actually distributed to members of
17 the public. Plaintiff is informed and believes that prior to the infringement at issue,
18 Defendant uploaded/downloaded, publicly displayed, and distributed at least one
19 (1) other of Plaintiff’s copyrighted images on eBay as far back as February 2012.
20 Plaintiff is thus furthered informed and believes that Defendant’s repeated
21 infringements are willful.

22 19. Defendants’ unlawful acts have interfered with and undermined Plaintiff’s
23 ability to market Plaintiff’s own original photographic works, thereby impairing
24 the value and prejudicing the sale or license by Plaintiff of his own photographic
25 works.
26

1 20. Plaintiff is entitled to a preliminary and permanent injunction restraining
2 Defendants from engaging in further acts of copyright infringement and causing
3 irreparable damage to Plaintiff for which he has no adequate remedy of law.

4 21. Defendants, by contributing to the unauthorized appropriation and use of
5 Plaintiff's original photographic works, have been and are engaging in acts of
6 unfair competition, unlawful appropriation, unjust enrichment, wrongful deception
7 of the purchasing public, and unlawful trading on Plaintiff's goodwill and the
8 public acceptance of Plaintiff's original photographic works.
9

10 **IV.**
11 **FIRST CLAIM FOR RELIEF**
12 **DIRECT COPYRIGHT INFRINGEMENT PURSUANT TO 17 U.S.C. 106**
13 **and 501**

14 22. Plaintiff incorporates by reference each allegation contained in the foregoing
15 paragraphs of this Complaint and Exhibits as if fully set forth herein.

16 23. Plaintiff owns all rights, titles, and interests in and to the copyright for the
17 Photograph, the use of which has not been licensed to Defendants.

18 24. Under Section 106 of the Copyright Act of 1976, 17 U.S.C. section 101 et
19 seq. (the "Copyright Act"), Plaintiff has the distinct, severable, and exclusive
20 rights, *inter alia*, to reproduce, distribute and publicly display the Photograph. (17
21 U.S.C. § 106(1), (3), and (5).)

22 25. By the actions alleged above, Defendants have infringed on Plaintiff's
23 copyrights by copying, displaying, publishing, and distributing Plaintiff's
24 copyrighted Photographs without permission to a global audience on the World
25 Wide Web.

26 26. Defendants misappropriated Plaintiff's copyrights in the Photograph with
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1 actual and/or constructive knowledge that the Photograph at issue did not belong to
2 Defendants; Defendants thereby willfully engaged in unauthorized use, copyright,
3 distribution, and/or display of Plaintiff's copyrighted Photograph.

4 27. Plaintiff is informed and believes that Defendants' acts of infringement were
5 ongoing, willful, intentional, and purposeful, and/or in reckless disregard of and
6 with indifference to Plaintiff's rights in that Defendants knew or recklessly failed
7 to know that they did not have the rights to use the Photograph in the manner in
8 which they used the Photograph in violation of Sections 106 and 501 of the
9 Copyright Act (17 U.S.C. sections 106 et seq. and 501 et seq.).

10 28. Plaintiff is informed and believes that, by the actions alleged above,
11 Defendants violated Plaintiff's exclusive rights as the copyright owner to
12 reproduce, adapt, display, distribute, and/or create derivative works under 17
13 U.S.C. §§ 101 et. seq. making Defendants liable for willful direct copyright
14 infringement.

15 29. As a direct and proximate result of Defendants' infringements, Plaintiff was
16 damaged and is entitled to recover from Defendants the damages, including
17 attorney's fees, he has sustained and will sustain, and any gains, profits and
18 advantages obtained by Defendants as a result of their acts of infringement alleged
19 above. At present, the amount of damages, gains, profits and advantages cannot be
20 fully ascertained by Plaintiff, but will be established according to proof at trial.
21 Plaintiff also seeks to recover statutory damages for Defendants' infringement of
22 his copyrights of up to \$150,000.00 per infringement.

23 30. Plaintiff is entitled to a preliminary and permanent injunction restraining
24 Defendants from engaging in further acts of copyright infringement and causing
25 irreparable damage to Plaintiff for which he has no adequate remedy of law.
26
27

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

31. For Plaintiff's actual damages.
32. For a full accounting under supervision of this Court of all profits, income, receipts, or other benefits derived by Defendants as a result of their willful and unlawful conduct.
33. For statutory damages under the Copyright Act of up to \$150,000.00 per infringement and,
34. For prejudgment interest.
35. For attorneys' fees and costs.
36. For preliminary and permanent injunctive relief from ongoing infringing activities, including, but not limited to:
 - a. enjoining Defendants, and all persons acting in concert or participation with them, from: directly or indirectly infringing in any manner, or causing, contributing to, enabling, facilitating, or participating in the infringement of Plaintiff's copyrights (whether now in existence or hereafter created) or exclusive rights under copyright, and
 - b. the seizure of all property made in, or used to assist in the violation of Plaintiff's exclusive copyrights pursuant to 17 U.S.C. §503, including, but not limited to, all copies of the Photograph, all domains and all servers and other computer equipment used to publish, broadcast or archive the Photograph; and
37. For such other and further relief as this Court deems just and appropriate.

1
2 Dated: June 25, 2015

LAW OFFICES OF ADAM I. GAFNI

3
4 By: /s/ Adam I. Gafni
5 Adam I. Gafni
6 Attorneys for Plaintiff
7 Barry Rosen
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of any and all issues triable with right by a jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: June 25, 2015

LAW OFFICES OF ADAM I. GAFNI

By: /s/ Adam I. Gafni

Adam I. Gafni
Attorneys for Plaintiff
Barry Rosen

EXHIBIT 1



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Item location: Fort Worth, Texas, United States

Ships to: Worldwide

Delivery: Estimated on or before **Sat. Jun. 30** to 90006Payments: **PayPal**, Bill Me Later | See detailsReturns: 14 days money back, buyer pays return shipping |
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This is a great promo of Tennis Star and Model ANNA KOURNIKOVA! This 8" x 10" hand-signed photo comes with Certificate of Authenticity from MOVIEFANZ and a lifetime money-back guarantee. Credit cards are welcome through PayPal.

SHIPPING & HANDLING: I ship anywhere in the world. High bidder pays \$2.95 shipping (overseas rate \$5.95).

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